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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,858	03/23/2005	Peter Greifenstein	238.011	4182

29166 7590 05/26/2006

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EXAMINER

CLARK, AMY LYNN

ART UNIT	PAPER NUMBER
1655	

DATE MAILED: 05/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/528,858	Applicant(s) GREIFENSTEIN, PETER	
	Examiner Amy L. Clark	Art Unit 1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-16 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-13, drawn to a medicinal product characterized in that through a content of components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, in each case as an active ingredient.

Group II, claim(s) 14, drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical product for treatment of Acquired Immune Deficiency Syndrome (AIDS).

Group III, claim(s) 15, drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical product for treatment of cancer, malignant tumors, carcinomas and sarcomas.

Group IV, claim(s) 16, drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical product for treatment of diseases of the psyche or the nervous system.

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The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Group I is drawn to a medicinal product characterized in that through a content of components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, in each case as an active ingredient, whereas Group II is drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical product for treatment of Acquired Immune Deficiency Syndrome (AIDS), whereas Group III is drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical product for treatment of cancer, malignant tumors, carcinomas and sarcomas, whereas Group IV is drawn to a method of using components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, for preparation of a medical

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product for treatment of diseases of the psyche or the nervous system. A search for the composition of Group I is not co-extensive with a search for any of the methods because the composition of Group I may be used in a materially different process of using that product. Furthermore, Claim 1, at least is anticipated by or obvious over Nakajima (US Patent Number: 6348200 B1); Date of Publication: February 19, 2002. See Reference A). Nakajima teaches a cosmetic composition comprising of components and/or extracts of *Prunus armenica* and of *Cocos nucifera* and of *Humulus lupulus* and germinated barley or germinated rye or germinated wheat and of mycete and the liquid obtained from alcoholic fermentation of the grape juice of grapevines, and from musaze and from rubus leaves, in each case as an active ingredient (See Column 12, continued into Column 13). Please note, the intended use of the claimed composition does not patentably distinguish the composition, *per se*, since such undisclosed use is inherent in the reference composition. In order to be limiting, the intended use must create a structural difference between the claimed composition and the prior art composition. In the instant case, the intended use does not create a structural difference, thus the intended use is not limiting. "[T]he discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentably new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433

(CCPA 1977). See also MPEP § 2112.01 with regard to inherency and product-by-process claims. Consequently, the special technical feature which links the claims does not provide a contribution over the prior art, so unity of the invention is lacking.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Group I:

Specie A: elect one or more component or extract from Claim 1 and specify whether the component is an extract.

If a mycete is elected, further elect one type of mycete from Claim 12.

Specie B: elect either pulp, multiple fruit, juice, milk, kernels, fibers, cell filaments, myzelles, endosperm, leaves, blossoms, buds, hulls or stalks from Claim 2 or if *Prunus americana* is elected as Specie A from Claim 1, further elect either pulp or kernel, if *Cocos nucifera* is elected as Specie A from Claim 1, further elect either fibers or endosperm, if mycetes are elected as Specie A from Claim 1, further elect either cell filaments or myzelles and if musaze or rubus leaves are elected, further elect either fruits or hulls from Claim 3.

Specie C: elect one additional component and one form of administration from Claim 4.

Specie D: elect one extraction method from either Claim 5, Claim 6, Claim 7 or Claim 8.

If the method of Claim 5 is elected, further elect partial or complete evaporation from Claim 5.

If the method of Claim 6 is elected, further elect hot or cold extraction and a continuous or discontinuous method from Claim 6.

If the method of Claim 7 is elected, further elect one continuous or one discontinuous extraction method from Claim 7.

If the method of Claim 8 is elected, further elect either maceration or percolation and ethanol or an ethanol-water mixture from Claim 8.

Specie E: elect the form the extract is in from Claim 9.

If a liquid extract is elected from Claim 9, further elect one form of administration from Claim 10.

Specie F: elect one illness from Claim 13.

Group III:

Specie A: elect one illness from Claim 15.

Group IV:

Specie A: elect one illness from Claim 16.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: Claim 1.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

Components of each plant and product listed in Claim 1 are distinct from extracts both physically and functionally and each plant and product listed in Claim 1 are both physically and functionally from each other both within each Claim and across the Claims, as are types of forms of the plants and products, as listed in Claims 2 and 3, as are carrier materials, auxiliary materials and additives and forms of administration, as listed in Claim 4, as are types of extraction methods, as listed in Claims 5-8, as are physical forms of the medicinal product, as listed in Claim 9, as are the forms of administration in Claim 10, as are they types of mycetes, as listed in Claim 12, as are the diseases listed in Claims 13, 15 and 16. And a search for plant component, plant extract or products from Claim 1, a search for the form of the plants and products from Claims 2 and 3, carrier materials, auxiliary materials and additives and forms of administration from Claim 4, extraction methods from Claims 5-8, physical forms of the medicinal product from Claim 9, forms of administration from Claim 10, types of

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mycetes from Claim 12 and diseases from Claims 13, 15 and 16 is not co-extensive with a search within each group or with each other.

* Applicant is advised that the cited U.S. patents and patent application publications are available for download via the Office's PAIR. As an alternate source, all U.S. patents and patent application publications are available on the USPTO web site (www.uspto.gov), from the Office of Public Records and from commercial sources. Should you receive inquiries about the use of the Office's PAIR system, applicants may be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571) 272-1310. The examiner can normally be reached on 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Amy L. Clark
AU 1655

Amy L. Clark
May 15, 2006


MICHELE FLOOD
PRIMARY EXAMINER